

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Roy Garvin et al.                      Art Unit : 4132  
Serial No. : 10/525,127                      Examiner : Dirk R Bass  
Filed : April 5, 2006                      Conf. No. : 2941  
Title : TEST TUBE WITH LID OPENING MECHANISM

**Mail Stop Amendment**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT**

Please consider the references listed on the enclosed PTO-1449 form. An English translation of the Abstract for Desig. ID 4 is submitted herewith. The other references are not in English, but they are discussed in an office action received in corresponding Japanese Application No. 2004-528702. A copy of the office action also is attached hereto for the Examiner's consideration.

This statement is being filed after a first Office action on the merits, but before receipt of a Final Office action or a Notice of Allowance. Please charge \$180 in payment of the late submission fee of 37 C.F.R. § 1.17(p), and apply any other charges or credits, to Deposit Account No. 06-1050.

Respectfully submitted,

Date: March 26, 2009/

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**CERTIFICATE OF MAILING BY EFS-WEB FILING**

I hereby certify that this paper was filed with the Patent and Trademark Office using the EFS-WEB system on this date: March 26, 2009

(Translation)

Mailed: October 14, 2008

NOTICE OF REASONS FOR REJECTION

Patent Application No.: 2004-528702

Examiner's Notice Date: October 9, 2008

Examiner: Taezo Nakamura

This application is rejected on the grounds stated below. Any opinion about the rejection must be filed within THREE MONTHS of the mailing date hereof.

REASONS

1. The inventions recited in the following claims are unpatentable under Section 29 (1) (iii) of the Patent Law as being described in the following publication distributed in Japan or a foreign country prior to this application or made available to the public through electric telecommunication lines in Japan or a foreign country prior to this application.
2. The inventions recited in the following claims are unpatentable under Section 29 (2) of the Patent Law, as being such that the inventions could easily have been made by a person with ordinary skill in the art to which the inventions pertain, on the basis of the inventions described in the following publications distributed in Japan or a foreign country prior to this application or the inventions made available to the public through electric telecommunication lines in Japan or a foreign country prior to this application.
3. The application fails to satisfy the requirements under Section 36 (4) and (6) of the Patent Law, on the grounds that the claims and the detailed description of the invention is defective in the following respects.
4. The application fails to satisfy the requirements under Section 37 of the Patent Law in the following respects.

REMARKS

Reason 1 (claims 1, 5-8, 10, 12 and 14)

In Reference 1, Fig. 1 shows a perspective view of the embodiment of the present invention, and the detailed description of the present invention describes as

follows: "[0005] [Effect] When opening the lid (6), the flange (5) of the lid (6) is pressed down with a finger. To close the lid, the top of the flange (5) or the lid (6) is held and the bottom (7) of the lid is forced into the opening (2) of the body (1) which is similar to the microtubes of the prior art" and "[0006] [Embodiment] The following are the explanation of the embodiment of the present invention. At least one slit (3) is formed on either one side or both sides of the opening (2) of the body (1) and the body is connected to the lid (6) by the band (4). At first, the lid (6) and the body (1) could be separate parts and when it is being used the two parts could be combined. There is no limitation to the size and the shape of the slit (3) if there is no harm in opening and closing the lid (6) and if the contents of the microtube do not leak. The band (4) has no limitation of placement and length if there is no harm in the opening and closing of the lid (6) and the band (4) does not touch the bottom (7) of the lid when the lid (6) is opened".

By considering the description of the aforementioned Fig. 1 of Reference 1, the microtube disclosed in Reference 1, comprises a body ("container") having an opening for receiving materials to be contained (an open end defining an opening), a closed end; and a lid adapted to make closing contact with the opening of the body, wherein the lid is provided with a flange that can open the lid sealing the body by pressing down on the lid with the finger. This microtube is "arranged to move towards the closed end of the container upon application of a mechanical force to a surface of the flange so as to remove the closing contact, whereby the container is opened".

Therefore, the microtube recited in claim 1 corresponds to the invention disclosed in Reference 1.

Also, there is no substantial difference between Reference 1 and claims 5-8, 10, 12 and 14 of the present invention.

#### Reason 2 (claims 1-15 and 19)

It is a commonly-known technical matter to use a microtube on a centrifuge.

In Reference 1, there is no description of a hinge formed between the underside

of the lid and the upper peripheral wall of the opening.

However, to use a hinge as a means for opening and closing the lid is a commonly known means that is disclosed in References 2-5, and to apply the means to the underside of the lid and the upper peripheral wall of the opening would have been obvious to a person skilled in the art.

To form the flange on the upper side is disclosed in Reference 5. In the microtube disclosed in Reference 1, a person skilled in the art would be able to select the shape of the flange (the direction and the size) so that the flange would not become an obstruction.

Therefore, the inventions recited in claims 1-16 would have been obvious to a person skilled in the art from the inventions disclosed in References 1-5.

## Reason 3

(A linguistic problem which we can deal with at our end.)

Also, the term "microcentrifuge (microfuge)" is not an expression that is normally adopted, and the meaning is unclear. (If this means that the size of the centrifuge is small, clarify this point and provide an explanation of the technical significance of this term). Furthermore, the recitation "connection means provides for relative movement between the lid/flange and the container" is unclear and if the meaning of this recitation is that the connection means such as "a rivet or an adhesive" provides the movement, it is still unclear since normally, a rivet or an adhesive does not provide the movement.

## Reference 4

The technical level of the invention recited in claim 1 is at the technical standard at the time of application and is not a new technical matter, and therefore, if the invention recited in claim 1 is defined as a specified invention, the inventions recited in claims 2-16 would not satisfy the requirements under Section 37 (i) and (ii) of the Patent Law. Also, if any of the inventions recited in the claims excluding claim 1 is

defined as a specified invention, the other claims would not satisfy the requirements under Section 37.

Since this application does not satisfy the requirements under Section 37, no examination has taken place for claim 16 (moreover, for claims 1-15 and 19 examinations have taken place for efficiency reasons). In addition, claims 17 and 18 had a deficiency in the description; therefore, no examination except the examination of description requirement has taken place. If a new reason for rejection is found, a new Office Action will be issued (furthermore, when making the amendments, underline the descriptions/recitations that have been changed, and also note that presence of the components of a combination of excerpts of technical matters ex-post in fragmentary form in the originally filed specification does not mean that the aforementioned combination was present in the originally filed specification as a completed invention with the technical idea which achieves the working effect that is characteristic of the present invention. Therefore, it is required to provide a sufficient explanation for the reason of the basis of the amendment as well as the amended invention and its effects are derived from the description of the originally filed specification.)

## References Cited:

1. Japanese Utility Model Application No. 1993-076267  
(Jpn. UM Appln. KOKAI Publication No. 07-037332)
2. Jpn. Pat. Appln. KOKAI Publication No. 49-081178
3. Japanese Utility Model Application No. 1982-161588  
(Jpn. UM Appln. KOKAI Publication No. 59-066759)
4. Jpn. Pat. Appln. KOKAI Publication No. 2002-193300
5. Former West German Patent Application Publication No. 1010761

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Prior Art Search Report

Searched Field(s): IPC 7th ed. B04B, B01L, G01N1/, B65D  
DB Name

Prior-Art Documents: Jpn. Pat. Appln. KOKAI Publication No. 06-206007  
Jpn. Pat. Appln. KOKAI Publication No. 09-072913  
Jpn. Pat. Appln. KOKAI Publication No. 05-126795  
Jpn. UM Appln. KOKAI Publication No. 57-036178

The result of this prior art search does not constitute the reasons for rejection.

If the applicant has any questions or wishes to have an interview, please contact:  
the 3rd Division of Patent Examination (Environmental Chemistry Division), Tel.  
03(3581)1101, Extension 3466.